BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Appellant: **Guillermo Silva**

Application No. **10/765,193**

Filing Date: **January 28, 2004**

Attorney Docket. No. **060014**

Date: March 9, 2007

Art Unit: **1761**

Examiner: **Helen F. Pratt**

Title: **COCONUT BEVERAGE AND METHOD OF PRODUCING THE SAME**

APPELLANT'S REPLY TO THE EXAMINER'S ANSWER

Dear Sirs/Madams:

In response to the recent Examiner's Answer, please consider the following Applicant's Reply with regard to the above-referenced application as follows.

With regard to the Examiner's rejection of claims 1 and 7 under 35 U.S.C. 103(a) over Leaflet No. 8, 1983, in view of Tayag (PH26114) and Beyerinck et al. (6,763,607), Applicant respectfully submitted for the Examiner's consideration that neither Leaflet, Tayag, nor Beyerinck, singly or combined, teach or lead someone skilled in the art to the invention claimed by Applicant.

The product claimed by the Applicant is different and unique when compared to Leaflet, Tayag, or Beyerinck, singly or combined, because it produces a spray dried rich creamy coconut mixture, that resembles the texture, consistency, taste, and appearance of

mixing natural coconut liquid endosperm with jelly-like meat of an immature said natural coconut recently picked from a coconut palm tree.

Applicant respectfully states that the Examiner has erroneously taken the position that the spray dried rich creamy coconut mixture of the instant invention and the coconut drinks taught by Leaflet, Tayag, and Beyerinck are similar and/or equivalent, when in fact they are not.

Neither Leaflet, Tayag, nor Beyerinck, singly or combined, teach how to produce Applicant's invention without having a coconut in its raw natural state.

The Examiner has failed to produce any prior art that teaches how a person, not having a coconut in its raw natural state, can have a rich creamy coconut mixture as Applicant does.

Without Applicant's invention, a person would not have the ability to produce a coconut cream unless they had fresh coconuts readily available. Specifically, to convert coconut milk into a creamy coconut mixture, a person would have to have young coconut meat, but a person cannot add young coconut meat if they do not have fresh coconuts readily available. Applicant claims a rich creamy coconut mixture that can be made without having the raw material in its natural stage, the young coconut meat.

Applicant's invention is distinguishable and innovative because many geographical areas do not have coconut trees and therefore people in those areas cannot enjoy a coconut mixture having the characteristics as that of the Applicant's claimed invention.

Applicant has met the burden as to the product-by-process claims by submitting the above-referenced objective evidence be defining the impossibility of deriving a rich creamy coconut mixture without having the raw material in its natural stage, the young coconut meat.

In addition, Applicant respectfully submits that the Examiner has not overcome her burden in the proposed combination intended to anticipate the invention. This hurdle requires a showing of the teaching or motivation to combine prior art references. This cannot be said of the cited references taken singly or in combination. There is no logical suggestion or the application of any sound scientific principle that would have motivated, at the time of the invention, the interrelation of information elements, structure and characterization to implement the claimed invention. It is clear that the Office has the burden of proof in the obviousness issue, and not the Applicant. ***In re Reuter***, 210 U.S.P.Q. 249 (CCPA 1981). The Office has not met its burden. ***In re Dembiazac***, 50 U.S.P.Q. 2d 1614 (CAFC 1999), the Court stated:

> "Our case law makes clear that the best defenses against the subtle but powerful

> attraction of a hindsight-based obviousness analysis is rigorous application of the requirement for a showing of the teaching or motivation to combine prior art references. Id at 1617."

The Court has previously reversed the Board in ***Interconnect Planning Corp. v. Feil***, 774 F.2d 1132, 1138, 227 USPQ 543, 547 (Fed. Cir. 1985) for falling in the "hindsight trap". The invention must be viewed not with the blueprint (for piecing together the prior art to defeat patentability) drawn by the inventor, but in the state of the art that existed at the time. ***In re Dembiazac*** at 1617, citing ***Interconnect Planning Corp. v. Feil***, supra.

Applicant believes his application is allowable and ready to be passed to publication and requests an early favorable action from the Board of Appeals.

Respectfully submitted,
Albert Bordas, P.A.
Attorneys for Applicant
5975 Sunset Drive, Suite 607
Miami, Florida 33143
Tel. 305-669-9848
Fax 305-669-9851

By: /Albert Bordas/ .
Albert Bordas, Esq.
Reg. No. 45,595